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JAPAN · ECONOMIC · INSTITUTE

JEI REPORT

NO. 6A February 14, 1986

THE U.S. INTERNATIONAL TRADE COMMISSION: COPING WITH THE RULES OF TRADE

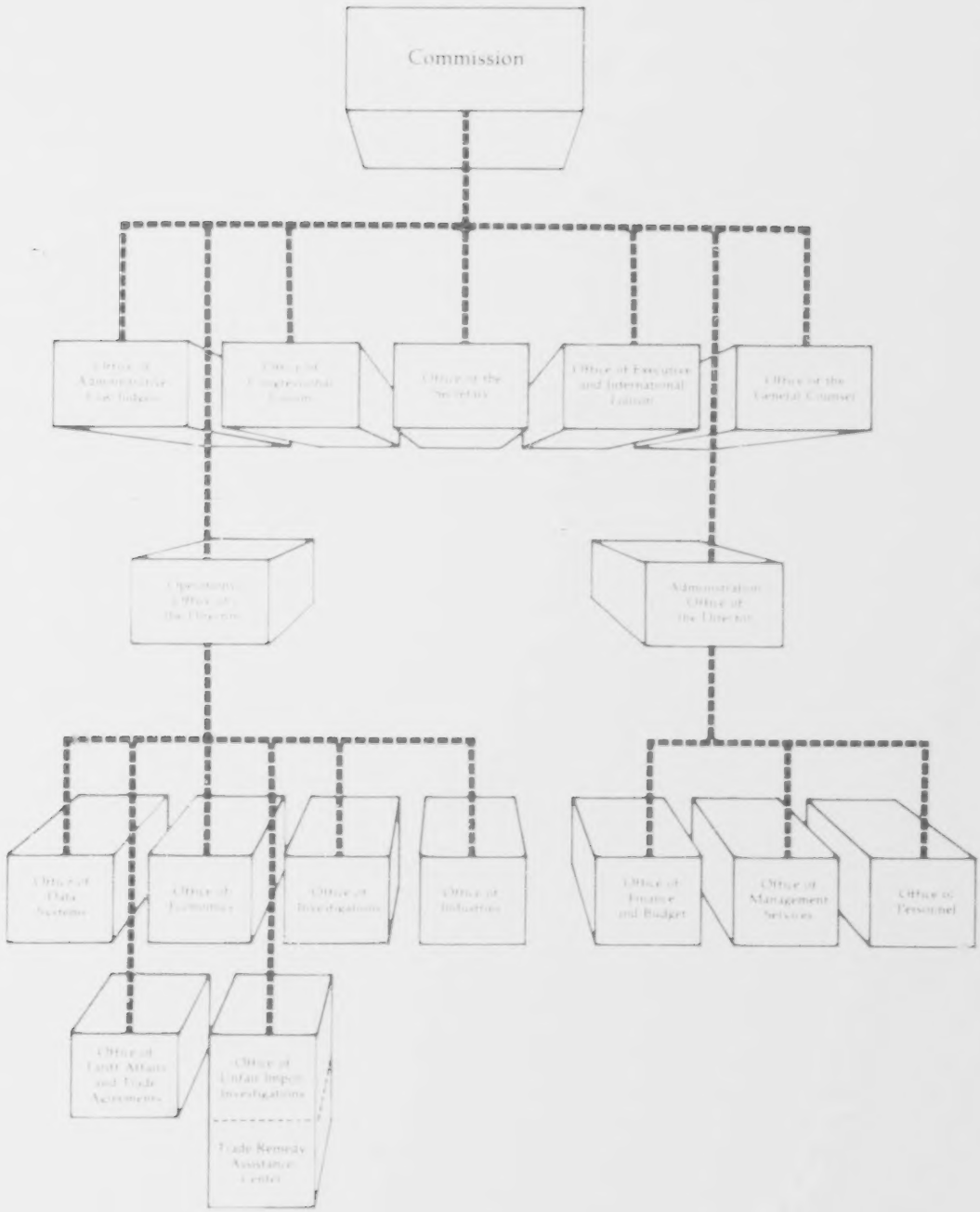
Summary

The U.S. International Trade Commission plays a large and growing role in trade policy implementation and, some say, in the formulation of trade policy itself. Yet few realize the variety of tasks that the six presidentially appointed commissioners preside over, or the constraints on them as they go about their duties.

This report will analyze the ITC's role in the trade policy process by focusing on its history and activities as well as its relations with the executive and legislative branches of government. The report will subsequently examine some of the issues facing the commission, illustrating the complexity of the ongoing trade reform debate and the manner in which trade and politics so frequently intersect.

Form and Function

The U.S. International Trade Commission is an independent, bipartisan, quasi-judicial agency charged with investigating all the factors relating to the effect of U.S. foreign trade on domestic production, employment and consumption. By Washington standards, the commission hardly qualifies as a bureaucracy in terms of size; it employs well under 500 people, and its staff has not grown appreciably in some forty years. Its administrative layout is also deceptively simple (see Chart). Yet even a cursory listing of the ITC's



The JEI REPORT (ISSN 0744-6489) is published weekly for $40 per year by the Japan Economic Institute of America, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036. Second class postage paid at Washington, D.C. POSTMASTERS: Send address changes to JEI, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036.

functions betrays the complexity of its mission -- 22 types of investigations, studies and reports are authorized under existing statutes. It is involved in such diverse areas as import relief for domestic industries, the Generalized System of Preferences, East-West trade, unfair foreign trade practices and the conduct of international negotiations.

The ITC serves as an adviser to the president and as an information resource for the White House as well as Congress, the U.S. Trade Representative and other interested parties. It gathers information for investigations and reports through hearings, surveys, fieldwork and integration of data from a variety of government agencies. The commission's principal tasks include:

- Recommending to the president relief for industries seriously injured by increasing imports (investigations under Section 201 of the 1974 Trade Act).

- Determining whether U.S. industries are materially injured by imports priced below fair value or subsidized (antidumping and countervailing-duty investigations).

- Actions subject to presidential disapproval against unfair trade practices such as patent infringement and intellectual property violations (investigations under Section 337 of the 1930 Tariff Act).

- Advising the president on whether agricultural imports interfere with the Department of Agriculture's price-support programs.

- Preparing studies on trade and tariff issues on request or self-initiation; monitoring import levels.

- Developing uniform statistical data on imports, exports and domestic production as well as helping to establish an international commodity code.

How did the commission accumulate such a variety of duties? An examination of the ITC's development since its inception portrays the numerous changes the commission has seen over the years and presents a basis for understanding the nature of its current role in U.S. trade policy.

A History of Controversy

The ITC was first established as the U.S. Tariff Commission in 1916 under a mandate that in many ways remained unchanged for the following 70 years. The creation of an objective body to study the impact of tariffs on domestic and international trade grew out of industry and government dissatisfaction with the inflexible nature of tariff policy and the acknowledgement that the involvement of experts was required. The Tariff Commission was charged with preparing analyses of U.S. competitiveness, collecting information on world tariffs and trade regulations and -- its most controversial function -- investigating unfair trade practices, including unfairly priced imports. Frank W. Taussig, the first chairman of the agency, commented on its role in the development and administration of U.S. trade policy this way:

> . . . our task is not to take tariff questions out of the hands of Congress, or to remove them from the realm of statesmanship. We hope that we can aid in their settlement and can promote the ends of statesmanship. . . . Nobody, however expert, can settle, still less dictate, the position which the country shall take on controverted political and industrial questions. All that any administrative or investigating body can do is to contribute toward discriminating and intelligent discussion and action. (Quoted in Two Centuries of Tariffs by John M. Dobson)

But it was just this problem of whether or not the commission should "make policy" and the links between commission decisions and party politics that plagued its designated role from the start. Neither rules preventing either political party from holding a majority nor the installation of overlapping terms for the commissioners freed the commission from charges of partisan politics during its early years. When the "Democratic and free-trade attitudes" of the first members chosen by President Woodrow Wilson clashed with those of the conservative legislators brought to Washington in the election of 1918, a slash in funding and personnel shortages resulted.

By 1921 resignations and presidential appointments skewed the commission so that its reputation for independence and technical competence was seriously damaged. Its investigative functions were so impaired by the politically hog-tied commissioners and the complicated administrative procedures detailed in the Fordney-McCumber Tariff Act of 1922 that by 1929 only five of 37 investigations initiated had been completed. Politicization was "so obvious" that a Senate committee investigated, and calls were made to abolish the Tariff Commission altogether.

However, by then the commission had developed rather sophisticated expertise in tariff information and data collection, and its reputation for thoroughness was valuable enough that Congress and President Herbert Hoover considered it worth preserving. Along with the overhaul of the tariff system in 1928-29, the commission was reorganized. The changes, incorporated in the infamous Smoot-Hawley Tariff Act of 1930, halved the commissioners' 12-year terms, dismissed all the sitting commissioners, and delineated the commission's duties in a form that is still largely intact today.

The focus on the Tariff Commission faded during the 1930s as the machinery of trade policy was based on reciprocal trade agreements rather than reworkings of U.S. tariff schedules, and Congress transfered most of the control over trade policy to the president. Although the agency's analytical and data-collection functions continued, its investigative activity slowed to a trickle. Moreover, until the end of World War II, the commissioners and their staffs participated at various levels of decisionmaking on trade agreements, including close involvement with the establishment of the General Agreement on Tariffs and Trade. The independence of the institution from executive agencies and policymaking activities seemed permanently undercut.

However, Congress' dislike for the Truman administration and its disillusionment with the prolonged trade agreements policy process prompted a trade administration overhaul in 1948 that, among other things, severed the Tariff Commission from the executive branch. The 1948 Trade Agreements Extension Act

assigned the commission to investigate and rule on domestic industry's claims of injury under the so-called "escape clause" of the GATT, a task that took up a great deal of the commission's time and energies. The legislation also started a cycle of executive-legislative tussles over commission participation in executive branch decisions and disagreements over the president's discretion to initiate concessions in trade negotiations.

When the dust settled in 1951, the Tariff Commission had a more narrowly defined support role in international trade negotiations and had retained the authority to study all items proposed for tariff negotiations -- that is, to indicate the "peril point," or point to which tariff concessions could be offered without seriously injuring domestic industry. The commission's peril-point investigations were, in effect, a check on the president's ability to make tariff reductions that lasted until 1962.

For the Tariff Commission, the 1950s were years of acquiring various investigative tasks and a prelude to another major reworking of trade remedy procedures and tariff scheduling in the early 1960s. Along with peril-point and escape-clause investigations and reviews, there was a statutory change in 1954 ceding to the commission the import injury determination step in antidumping cases that was originally under the purview of the Treasury Department, and a 1951 revision of the Agricultural Adjustment Act that reinvigorated its activities under that statute.

The 1962 Trade Expansion Act revised trade remedy procedures and added adjustment assistance to the list of relief measures the commission could recommend in escape-clause cases. A mechanism by which Congress could override a presidential decision not to take escape-clause action was also provided. The 1962 act marked the commission's first involvement in adjustment cases; between 1962 and 1975, 331 worker and company adjustment assistance investigations were completed. Also included in the 1962 legislation was the task of reporting on the domestic economic impact of negotiated concessions, a provision almost identical to the peril-point investigation. In 1965 Congress added the task of monitoring the conditions of workers affected by the removal of tariffs on U.S. imports of motor vehicles and automotive parts manufactured in Canada.

The first half of the 1960s saw several efforts to review and revise tariff schedules and, because of its expertise in compiling technical data, this work fell to the commission. The result was the first annual publication of the Tariff Schedules of the United States in 1963. The commission was also deeply involved in the Kennedy Round of GATT multilateral trade negotiations in the role of technical adviser and data coordinator.

Off and on since first ceding investigatory functions to the commission in 1922, Congress has turned its attention to how actively the agency pursues injury investigations and how often it recommends relief. These concerns arose again when the tortuous language of the 1962 act made it difficult for the commission to determine injury under the adjustment assistance provisions. So many negative determinations were made during the 1960s that petitions for relief slowed and, in fact, the number of cases in all the various investigative categories decreased markedly. However, the pace picked up again in 1970 as the United States went through a recession and the Tariff Commission began

to recommend relief more frequently. Petitions of all kinds skyrocketed, and yet another debate and revision of trade relief procedures began in Congress, culminating in the Trade Act of 1974.

Adjustments to Law Continue

The present system of trade remedy law is largely a result of the administrative and procedural overhaul instituted under the 1974 legislation. The Tariff Commission was renamed the International Trade Commission in view of its wide range of responsibilities -- both domestically with import surveys and trade and tariff information and internationally with examinations of U.S. exports and world trade conditions. Another attempt was made to guarantee the ITC's independence from the executive branch by transfering budgetary control of the commission to Congress, installing a rotating system for commission chairman selection, and lengthening the terms of the commissioners to nine years.

The 1974 Trade Act attempted to update and reorganize trade remedy statutes. In the process, the ITC's investigative functions were redefined and it was given several new areas of responsibility. Escape-clause investigations were encoded in Section 201 of the act, with new, somewhat simpler criteria for judging injury from imports. Rapidly rising imports had to be found to be a substantial cause of actual or potential serious injury to domestic industry in order for trade relief to be recommended. Moreover, provision was made for a review by the commission of the probable economic effects of extending, reducing or terminating that relief. Congress could also force the president to act in these cases. If a majority of commissioners voted for relief and the president rejected their position, Congress could override the president through a concurrent resolution and impose the ITC's recommendation.

The new legislation outlined exactly who could petition for relief under the statute and listed the kinds of relief the ITC could recommend -- higher tariffs, quotas, tariff-rate quotas or any combination of these were allowed. Worker and company adjustment assistance investigations were moved to other agencies, but the implications of labor displacement, although no longer explict, remained a criteria in the ITC's consideration of industrial health.

Investigative procedures for cases under Section 337 of the Tariff Act of 1930, usually regarding intellectual property and patent rights, were shortened and the investigative process "sharply altered" and given a more formal and judicial style. The commission was authorized to issue exclusion orders as well as cease and desist orders as necessary. The revised statute also ordered that factors other than just the domestic industry's health be taken into consideration when reviewing the potential effects of relief. Consumers, market conditions, general health and welfare, and the economy were among the explicit criteria listed.

Although investigations of foreign practices that impede U.S. exports under Section 301 of the 1974 act did not provide a role for the ITC, the president is able, under this legislation, to ask the ITC for an impact statement concerning domestic economic effects. Antidumping law was substantially revised by requiring a preliminary ITC ruling that there is a reasonable indication of injury from imports sold at less than fair value. Moreover, the

ITC was given the task of investigating market disruption caused by imports from Communist countries and monitoring and reporting on trade between the United States and nonmarket economies. Finally, the 1974 act reasserted the ITC's job of studying the economic effects of concessions in multilateral trade negotiations and the Generalized System of Preferences, and authorized it to play a role in the preparation of international trade negotiations under the GATT.

Still, dissatisfaction with the amount of relief afforded domestic industry continued, as did attempts to tinker with trade remedy laws. Largely in reaction to a split decision over non-rubber shoe imports, Congress amended Section 201 in 1976 to hold that a remedy suggested by a plurality rather than a majority of commissioners was adequate for the purpose of a congressional override of presidential inaction.

ITC findings of injury in the first 201 cases after 1974 had given rise to criticism that the agency had become substantially more protectionist in its newest incarnation. Others judged the escape-clause process to be as difficult as it ever was for an industry requesting relief. Clearly, the commission's record on 201 cases in the past 11 years has been mixed at best: the ITC has recommended relief in 32 of 55 cases completed since 1975. The perception that Section 201 was ineffective may be more easily traced to presidential reluctance to invoke the ITC's recommendations -- the White House granted relief to industry in only 18 of the 55 cases completed. Interestingly, executive branch decisions to ignore ITC remedies did not imply that the organization had less work to do. Confidence in the ITC's expertise as an industry assessor remained so high that the commission was assigned a role monitoring the steel import relief program instituted in late 1984 by President Reagan as an alternative to ITC quota recommendations.

In 1979, Congress focused on the antidumping and countervailing-duty laws, making a number of technical revisions and providing judicial review for such decisions. A major new job for the commission was the task of reviewing effects on domestic industry of a revocation of countervailing-duty orders issued before 1980.

The administration was preoccupied with its twin goals of renewing the GSP system and getting approval for a free-trade arrangement with Israel when work began on what was to become the Trade and Tariff Act of 1984. But Congress was interested in reinvigorating the trade remedy statutes, especially Section 201, since petition levels had dropped to only one or two cases a year after the December 1980 negative determination on car imports. Members also attempted to expand the definition of unfair trade practices and include natural resource subsidies under the antidumping and countervailing-duty laws -- ideas that still take up a large part of the trade reform debate today. But by and large, these proposals were thrown out during the conference committee process.

What remained were congressional instructions that the ITC take into account economic factors like plant closings and other structural disturbances in its 201 injury considerations. Adjustment assistance was added once again to the list of 201 relief remedies and, as a result of a Supreme Court ruling on legislative vetoes, a joint rather than a concurrent resolution allowed

Congress to override the president's refusal to bestow 201 relief. Moreover, the new law established a Trade Remedy Assistance Office in the ITC to help industry, particularly small businesses, wade through the complicated procedures for filing relief petitions.

The antidumping and countervailing-duty revisions, mostly technical, included a clarification of the factors to be considered when making a determination on the threat of material injury posed by unfairly priced imports. It also required the commission, in cases where an import from several different countries is affecting domestic industry, to consider the cumulative impact when determining injury. Finally, the 1984 legislation attempted to expand the definition of "subsidy" to include so-called "upstream subsidies," or subsidies of inputs in the production process.

The soaring dollar and the accompanying surge in imports has indeed brought another cycle of relief requests. Between 1981 and 1984 the ITC workload grew by 88 percent, mostly through a sharp rise in antidumping and countervailing-duty petitions. The ITC has become busier than ever, devoting an increasingly large share of its time to investigations rather than to other duties. Chairwoman Paula Stern likens the institution to "a "M*A*S*H unit for the wounded in the ongoing trade battles," or a "cop on the import beat." Not surprisingly, discussion has been renewed among those in the trade field on how to improve trade remedy laws and how to make the best use of the ITC.

The Politics of Trade Law Administration

Chairwoman Stern has explained the method the United States has developed for handling trade problems as being essentially made up of two structures:

> The first is the rule-oriented approach, of which my agency, the U.S. International Trade Commission, is a prime example. Here problems are resolved within the framework of legal standards. The second structure utilizes the political system. Relief can be sought either in Congress or the executive branch. . . . Our statutory framework for dealing with import relief requests blends these two structures effectively. (Address to Swedish Wholesalers, Stockholm, Sweden, March 25, 1985)

There are political angles to the ITC, however, although the agency continues to pride itself on its independence and objectivity. These are best viewed in three instances: the impact of the organization and its processes on U.S. relations with other nations; the external and internal political pressures brought to bear on the procedures the ITC administers; and the political stance of the commissioners themselves.

The ITC's job on paper seems essentially legalistic and far removed from the active debate and management of relations between nations. But putting trade law into practice can have an impact on bilateral affairs. A case in point is the ITC's involvement with Japan. More antidumping and countervailing-duty orders are in effect against Japan than any other country -- 35 by the end of 1984. The first industrial targeting study taken on by the commission was a case study of Japanese practices. During FY 1985 the ITC investigated or

reviewed cases involving about a dozen Japanese products, mostly under the antidumping and countervailing-duty statutes.

This does not mean that the ITC is out to "ge[t] Japan: the commission is better viewed as an indicator of the degree of U[.] business and government concern. However, the number of cases and intense media coverage of bilateral developments add substance to the perception that trading relations between the two countries are in sorry shape.

Moreover, the ITC is not simply a passive body that tests injury claims. It is also the instrument that recommends and, in some cases, delivers the slap on the hand. Finally, it functions as a forum for strategic moves by opposing sides. The ITC has an impact on the conduct of U.S.-Japan relations as any review of the steel and auto cases of the late 1970s indicates. More recently, ITC injury rulings on cellular mobile telephones and preliminary judgments on semiconductors added urgency to the bilateral negotiations conducted between the two countries last year.

The battle over semiconductors will continue to be influenced by ITC final injury decisions scheduled later this year in the antidumping cases against Japanese-made EPROMs (erasable, programmable read-only memories), 64K DRAMs (dynamic random access memories) and 256K DRAMs. Preliminary findings of injury in these three investigations have provoked more efforts by Tokyo to settle the question "out of court," as it were. Japanese industry representatives realize that once the ITC makes its final determination, the only recourse is appeal to the U.S. Court of International Trade, and this judicial body rarely overturns an ITC decision.

At home, as is evident by the ITC's rather turbulent institutional history, the struggle between the executive and legislative branches to manage trade policy has resulted in constant review and revision of the ITC's roles and missions. The process that has elicited the closest examination and the most political controversy is Section 201. Here, the ITC can be viewed as a pressure valve for protectionist sentiments, or as an implementor of complex "procedural protectionism" as designed by Congress. Either way, it is caught in the middle. And in the elaborate procedure the United States has constructed to comply with fairly straightforward GATT provisions on safeguards, there is room for political pressures from domestic petitioners, foreign governments, and the executive and legislative branches.

As pointed out earlier, the ITC conducts a "rule-oriented investigation" and is restricted to recommending certain specific remedies. The three criteria the commissioners must employ in a 201 proceeding are a determination of an increase in imports; a finding that the domestic industry in question has been seriously injured or threatened with serious injury; and a determination that the increase in imports is a cause of the industry's serious injury that is as important as any other cause. The ITC then recommends relief from a discrete list of options elucidated in the statute. The president, with an eye to larger political and economic policy concerns, makes the final decision to bestow relief, and has the discretion to disregard or modify the ITC recommendation or to institute relief of any kind he deems appropriate.

But political considerations start well before this final decision stage. The decision to submit a petition for action is one example. Observers

point out that since Section 201 was instituted there have been surges in the number of relief requests during election years (see Table). There is little disagreement over why this occurs. Industry representatives feel that the pressures of election-year politics affect legislators that are already sensitive to the effects of imports on unemployment and potential "deindustrialization," and make it more difficult for the president to ignore an ITC recommendation for relief.

Selected ITC Investigations Completed, FY 1975-85

Fiscal Year	Section 201 Investigations	Antidumping and Countervailing-Duty Investigations
1975	--	6
1976	14	19
1977	12	11
1978	9	35
1979	3	33
1980	5	108
1981	1	49
1982	2	179
1983	2	129
1984	5	117
1985	2	185
Total	55*	871

*ITC recommended relief in 32 cases. President granted remedies in 18 cases.

Source: U.S. International Trade Commission, Annual Reports.

Similarly, the degree of political support an industry can muster from legislators, labor unions and the White House is a major consideration for strategists planning a 201 petition. Steel and textiles have always had tremendous political clout -- wringing concessions from successive administrations no matter how adamantly they promote a hands-off business policy. Footwear, on the other hand, has had considerably less success.

How much the political turmoil over industrial relief affects the ITC's consideration of the case is an open question. One long-time trade policy observer suggests that in some votes the commissioners are looking over their shoulders to Capitol Hill, particularly in the direction of the Senate Finance and House Ways and Means Committees, which hold sway not only over the ITC's funding but trade law reform proposals as well. An example frequently cited of this kind of political sensitivity is non-rubber footwear. The commissioners turned down industry requests for relief twice before finding in the affirmative in July 1985. Sources inside the ITC insist that the criteria by which injury is judged changed substantially and necessitated a turnaround.

Other observers are less sure. They point out that the commissioners are independent, with very little guidance on how to evaluate statutes and the leeway to interpret the injury formula rigidly or liberally. According to this reasoning, the commissioners must have realized another negative finding would have ignited congressional demands for protectionism (a development that occurred anyway when the president decided to disregard the ITC's recommendation). The commissioners may have been further sensitized by the frequent statutorial reprimands they received from Congress. The provision of the 1984 Trade Act instructing the ITC to consider plant closings and employment trends in its analysis was aimed at the agency's decision to recommend against relief for footwear firms in 1984.

But insiders deny that political weights and balances entered into the 1985 footwear decision. Although they admit that the commissioners were aware of some political fallout and knew that an affirmative decision, if rejected by the president, would put the White House in a confrontation with Congress, the commissioners issued the injury ruling based on the facts.

Even critics give the ITC consistently high marks for its professionalism, the quality of its staffing, and its determination to make legally sound judgments that cannot be construed as arbitrary or capricious. Still, there is disagreement over whether or not its procedures are politically tainted. A Washington attorney who represents U.S. industry says, "We think long and hard whether politics should enter into the case we present." Caution is necessary, he adds, because some lawyers feel that introducing political pressure into an ITC decision is as likely to cause a negative reaction among the commissioners as a positive one.

"They're impartial as judges," asserts a lawyer representing foreign interests. "They're not blatently political, but one can find votes that seem ideological or political. By and large they do their job sincerely." Still, he views the commissioners as accessible for lobbying purposes and thinks there is considerable room for maneuver in all stages of the elaborate trade policy-making machinery.

Recent commissioners have, for the most part, been successful in preserving the ITC's longstanding reputation for fair and impartial judgments. Although each has an extensive background in legal and economic affairs, their individual voting records do not indicate slavish devotion to any particular philosophy, especially in free-market versus protectionist terms. It is easy to see some correlation between increases in injury findings and legislatively dictated liberalization of the use of Section 201. It is not so easy to distinguish a relationship between party affiliation/administration loyalty and the commissioners' voting habits.

But for those willing to try to divine how the panel votes, there are a number of clues available in the form of chairwoman Paula Stern's speeches. Ms. Stern has firm ideas and an activist stance on the need for exchange rate intervention, government support for structural adjustment programs and anti-trust revision. She has put the blame for the burgeoning U.S. trade deficit squarely on the strength of the dollar, and openly criticized the Reagan administration for its lack of a coordinated trade strategy to combat the situation.

She also has confidence that the ITC is useful and would like to see its role enhanced. "My own commission has acquired great expertise in assessing the strengths and weaknesses of many industries. That information is valuable only if it is used. It rarely is," she complained during an appearance last fall. In an interview published in the Washington Post, Ms. Stern was not shy about her part in the ongoing controversy over trade policy, stating that she has set out to "influence the debate in any way I can."

These statements are viewed as an embarassment by many of the other commissioners, according to ITC sources. Any kind of involvement in policy-making is well outside the scope of the ITC's traditional mission and a commissioner's authority. It is their fear that when doubts are cast about the independence of the ITC, the commission could be only a few steps away from losing its reputation for impartiality.

But Ms. Stern's activities are viewed more kindly by others. "She doesn't go that far," maintains one observer, "she's just one of the chorus." Many agree that Ms. Stern's comments represent one line of mainstream criticism. They also believe that it does not reflect on her work with the commission, pointing out that despite her high profile, she wields only one vote out of six and her votes are impossible to peg politically. For them, her experience examining the health of U.S. industry and measuring the impact of imports qualifies her, as well as the other commissioners, to participate in the trade debate.

A More Generous Slice of the Policy Pie?

Of all the issues facing the ITC as it approaches its eighth decade, the problem of an expanding mandate takes precedence. The specter of more duties and more control over trade remedy assistance has arisen largely because of the new political strength that trade issues have acquired and the laggard, and what some call ineffective, manner in which decisions on trade are reached by the executive branch.

Despite some distant rumblings about politics, the ITC's legal judgments, investigations and reports are universely lauded as comprehensive and fair. When proposals to revise trade laws are being written, according to one Hill staffer, the suggestion is often made to let the ITC handle it. And not only in matters related to import relief; Congress is distrustful of and impatient for reports by the executive agencies and is turning increasingly to the commission for updated information. This trend shows every sign of increasing, leading some to observe that the ITC seems to be filling the vacuum that better interagency coordination, or even a Department of Trade would fill. The commission seems to be sliding, albeit quite subtly, into an active policy role.

Can the institution cope with a workload that continues to increase and develop the expertise needed to answer Congress' questions? Many think so. Although its "plate is full," by all accounts the ITC gets the work done and, remarkably, almost always on time. If the commission needs to increase its budget in order to meet growing demands, ITC employees are confident they will get what they ask for from Congress. Similarly, they are convinced that they can beat back any proposals to shorten what are already very tight investiga-

tive schedules. As for new functions, when the agency was handed the task of examining foreign industrial targeting, it produced reports that trade analysts consider to be of the highest quality.

Despite these upbeat feelings about the agency's product, not a few question whether the ITC should develop in new directions, particularly in functional terms. Evaluation of overseas industries and foreign export policies, such as the industrial targeting study, is one case. The ITC is required by statute to consider production activities abroad as well as foreign export policies and import trends. Yet it cannot send people overseas to examine company books, mail out questionnaires or otherwise develop the solid data base it needs for this type of inquiry in the same way it gathers information domestically. The commission is unlikely to settle for these limitations for long and for this reason an overhaul of its analytic perspective is imminent. "The ITC is more comfortable with a mercantile view, but it is developing a perspective to look at things globally," says one trade analyst. "The development of an export orientation is inevitable."

There are short-term changes in the offing as well, stemming from the sweeping debate over trade that intensified last year. Virtually all the trade proposals on Capitol Hill contain provisions that would considerably alter the trade law status quo. ITC insiders indicate concern about several reform issues. A new focus on adjustment programs has given rise to suggestions that the ITC should be given the responsibility of sitting down with management and labor and working out industrial restructuring programs. A major element in this debate is conditionality, that is, the concept that to be eligible for relief an industry must commit to change and solve such problems as high cost and low productivity. "Adjustment smacks of industrial policy," says one longtime policy observer. "It is more difficult in practice than it appears in theory."

This complicated task has been endorsed by chairwoman Stern, who maintains that in view of the country's many attempts to find a responsive import relief system, "more finely tuned instruments to promote adjustment are needed." The ITC, with its expertise on problems confronting manufacturing industries is well suited to this work, she believes. Others, however, are dubious about the agency's ability to fashion trade remedies. "[The Congress] thinks a little more highly of us than our capabilities," an ITC source says sheepishly.

Another popular notion for escape-clause revision concerns limits on or an outright end to the president's ability to impose or withhold ITC-recommended relief. The issue of presidential discretion may prove to be one of the most volatile of the upcoming legislative debates, hinging as it does on congressional confidence in the president's ability to establish and implement effective policy. With the president's authority held in check, as well as a greatly expanded set of relief options included in many proposals, the commission's power over the ultimate direction of the relief process would increase. "The removal of the president's discretion in 201 puts us in a bit of a policy role in historical terms," admits one source.

The policy role question is an irksome one to those in the ITC who recall the agency's past problems and see the commission encroaching on executive branch territory once again. Still, everyone realizes that both in theory and in practice the quasi-judicial, policy-neutral mandate has been

difficult to maintain. The commissioners and their staffs frequently testify at congressional hearings on almost every element of trade policy implementation. The strain of refraining from comments on policymaking is always evident. For example, Congress regularly asks executive agencies to comment on proposed legislation. Rather than passing judgment, the ITC files a factual report and technical reading of the proposed statute. Even if a proposal directly concerns the workings of the commission, ITC representatives may explain the intricacies of trade law and implementation; they can explain the difficulties and ask for guidance, but they must not recommend solutions that can be construed as new policy.

A former ITC employee recalls the difficulties he had wearing his "ITC hat" during strategy sessions between executive agencies participating in multilateral trade negotiations. He had to constantly remind himself that his was a non-policy mandate -- that although he naturally was influencing policy by offering technical advice, he could not initiate a policy decision. Some trade analysts consider convoluted attempts to stay "pure" pointless, and label the ITC's attempts to dissociate itself from the decisionmaking process foolish. "Of course they're in the policy process," says a trade lawyer. "They have tremendous impact on policy in terms of analysis and the issues."

Conclusion

The ITC today is, as institutional historian John M. Dobson has stated, the culmination of seven decades of thought and reconsideration. Current developments seem remarkably consistent with previous historical debates. There is a certain continuity in the leitmotif of struggle between the president and Congress over control of trade policy. The ITC as an independent agency is caught in the middle, its institutional outlines buffeted by demands from both sides.

The politicization of trade and questions about the benefits of foreign competition are also consistent themes. Every new look at the state of international trade results in tinkering with trade remedy laws and the augmentation of an already complex, hydra-headed process. The ITC, as implementor, must cope with legislative whims created by politics as much as by economics, divine congressional intent and, from ambiguous and archaic language, render sound legal judgments.

This makes it even more amazing that the commission's work is so highly regarded by both participants and observers. Because of its impartiality and technical expertise, the agency is gradually assuming greater responsibilities. The possibility of its crossing openly into the policy arena seems inevitable. If the ITC is indeed a "trade cop," it is a much decorated one that might be aspiring to public office.

For further information, contact Sheri Hoptman.

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The views expressed in this report are those of the author and do not necessarily represent those of the Japan Economic Institute.

Appendix: The ITC's Evolving Roles and Missions

September 8, 1916 - Establishment of the U.S. Tariff Commission.

Fordney-McCumber Tariff Act of 1922 - Tariff Commission given investigative duties over flexible-tariff cases, unfair trade practices and discrimination.

Smoot-Hawley Tariff Act of 1930 - Tariff Commission reorganization; flexible-tariff tasks increased.

Amendment to the Agricultural Adjustment Act, 1935 - Tariff Commission given investigative authority over agricultural imports thought to be interfering with government price-maintenance programs.

Trade Agreements Extension Act of 1948 - Tariff Commission assigned to investigate and rule on escape-clause cases; commissioners and staff explicitly excluded from negotiation and policy formulation processes; investigation of the effects of proposed negotiating concessions on domestic industry added ("peril-point" investigations).

Trade Agreements Extension Act of 1949 - "Peril-point" provision repealed; Tariff Commission participation in interdepartmental trade committee meetings allowed.

Trade Agreements Extension Act of 1951 - "Peril-point" provision restored; the president must justify his decision to disregard the Tariff Commission's findings of potential harm through the "peril-point" process; statutory procedures for escape-clause investigations outlined.

Tariff Classification Act of 1962 - Tariff Commission ordered to prepare Tariff Schedules of the United States.

Trade Expansion Act of 1962 - Tariff Commission given reporting authority over economic effects of negotiated concessions; injury-determining criteria restricted; adjustment assistance remedy added.

Trade Act of 1974 - Tariff Commission reorganized as the International Trade Commission. Expanded mandate included task of preparing statements on the probable economic effects of trade negotiations and the Generalized System of Preferences, participating in new trade relief processes, and monitoring and reporting on East-West trade relations. Procedural changes in Section 337 investigations included authority to issue cease and desist orders and shorter time limits on cases. Greater independence from the executive branch through the budgetary process and commissioner appointment system were added.

Tax Code Reform, Amendment, 1976 - Provision added to provide that a vote by a plurality of commissioners for a particular remedy in 201 cases that the president chooses to disregard can be the basis for a congressional override in the form of a concurrent resolution.

Trade Agreements Act of 1979 - Injury test installed in countervailing-duty process; review provided for reviewing outstanding countervailing-duty orders;

antidumping and countervailing-duty technical revisions; judicial review instituted.

Trade and Tariff Act of 1984 - Scope for injury findings in antidumping and countervailing-duty cases expanded to include threat from potential imports as well as actual imports; ITC directed to consider the cumulative effects of imports originating in several countries; definition of subsidy in countervailing-duty statute expanded to include "upstream subsidies"; additional economic factors like plant closings added to criteria for injury in 201 cases; congressional override authority form changed from concurrent to joint resolution.

Source: U.S. International Trade Commission

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